



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

[Docket Number USCG-2021-0774]

RIN 1625-AA08

### Special Local Regulation; Montlake Cut, Union Bay Reach, Seattle, Washington

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a special local regulation for a recurring marine event on Lake Washington the first Saturday of May each year. This action is necessary to provide for the safety of life on the navigable waters during the marine event. This proposed rulemaking would restrict vessel traffic in the designated area during the event unless authorized by the Captain of the Port Sector Puget Sound or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2021-0774 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Chief Warrant Officer William Martinez, Sector

Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206-217-6051, email SectorPugetSoundWWM@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Puget Sound
DHS	Department of Homeland Security
FR	<i><b>Federal Register</b></i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

The Coast Guard proposes to establish a special local regulation for the Windermere Cup marine event held annually on the first Saturday of May each year from 8 a.m. to noon. This event is held on the navigable waters of the Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, WA.

Under 46 U.S.C. 70041, Coast Guard Thirteenth District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved marine event. The District Commander has determined that potential hazards associated with the marine event would pose a safety concern for anyone within the race area.

In order to protect the safety of all waterway users, including event participants and spectators, this proposed rule would establish a special local regulation for the time and location of the marine event. Participant means all persons and vessels registered with the event sponsor as a participants in the race. Spectator means any vessel in the vicinity of the marine event with the primary purpose of witnessing the marine event. Spectator vessels can observe the marine event from one of the designated spectator areas. One area is located north of Union Bay Reach in Union Bay. The other is located

in the area between the state route 520 bridge and south of Union Bay Reach. Vessels would not be permitted to enter the regulated areas unless authorized by the COTP or a designated representative.

### **III. Discussion of Proposed Rule**

The Coast Guard proposes to add a new annually recurring special local regulation on the first Saturday of May each year from 8 a.m. to 12 p.m. The regulated area would cover the all navigable waters from Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, from the southern corner of University of Washington Oceanography pier at 47° 38' 57"N, 122° 18' 45"W thence south to 47° 38' 46"N, 122° 18' 45"W, thence eastward to Webster Point Light 21 at 47° 38' 51"N, 122° 16' 33"W, thence south to the SR520 bridge at 47° 38' 37"N, 122° 16' 34"W. These coordinates are based on North American Datum 83 (NAD 83).

The duration of the regulated area is intended to ensure the safety of the public and participants during the rowing race. Non-participant vessels are not permitted to enter, transit through, anchor in, or remain within the regulated area without obtaining permission from the COTP or a designated representative. A designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Puget Sound (COTP) in the enforcement of the regulations in this section. To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector Puget Sound Command Center at 206-217-6002. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative. The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners, announcement in the Local Notice to Mariners and on-scene designated representatives. The regulatory

text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the special local regulation. Vessel traffic would be able to safely transit around this special local regulation area which would impact a small-designated area of the Montlake Cut and Union Bay Reach. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the areas, and the proposed rule would allow vessels to seek permission to enter the areas.

##### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order

13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves regulated area lasting 4 hours that would prohibit persons or vessels from transiting the regulated area during the rowing event. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket.

For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2021-0774 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following

instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided.

For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.1311 to read as follows:

#### **§ 100.1311 Special Local Regulation; Montlake Cut, Lake Washington, Seattle, Washington**

(a) *Regulated area.* The regulations in this section apply to the following area: the navigable waters from Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, from the southern corner of University of Washington Oceanography pier at 47° 38' 57"N, 122° 18' 45"W thence south to 47° 38' 46"N, 122° 18' 45"W, thence eastward to Webster Point Light 21 at 47° 38' 51"N, 122° 16' 33"W, thence south to the SR520 bridge at 47° 38' 37"N, 122° 16' 34"W. These coordinates are based on North American Datum 83 (NAD 83).



(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Puget Sound (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participants in the race. Spectator means any vessel in the vicinity of a marine event with the primary purpose of witnessing the event. Spectator vessels can observe the marine event from one of the designated spectator areas. One area is located north of Union Bay Reach in Union Bay. The other is located in the area between the state route 520 bridge and south of Union Bay Reach.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector Puget Sound Command Center at 206-217-6002. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners, announcement in the local notice to mariners, and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced annually from 8 a.m. to 12 a.m. on first Saturday of May.

Dated: October 26, 2021.

**M. W. Bouboulis,**

*Rear Admiral, U.S. Coast Guard,*

*Commander, Thirteenth Coast Guard District.*

Editorial note: This document was received for publication by the Office of the Federal Register on January 27, 2022.

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